

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

76-7047

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

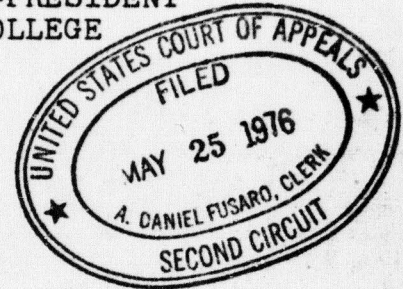
JUDY C. EGELSTON,

Plaintiff-Appellant,

-vs-

STATE UNIVERSITY COLLEGE AT GENESEO; STATE
UNIVERSITY COLLEGE OF ARTS AND SCIENCES,
DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY
COLLEGE AT GENESEO; THOMAS COLAHAN, VICE-PRESIDENT
FOR ACADEMIC AFFAIRS, STATE UNIVERSITY COLLEGE
AT GENESEO; NICK LAGATTUTA, DEAN OF
EDUCATIONAL STUDIES, STATE UNIVERSITY
COLLEGE AT GENESEO, GENESEO, NEW YORK,

Defendants-Appellees,



REPLY BRIEF OF PLAINTIFF-APPELLANT

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ARGUMENT

POINT I

THE COMPLAINT STATES A CLAIM PURSUANT TO TITLE VII OF THE CIVIL RIGHTS ACT OF 1964; PLAINTIFF HAS PROPERLY FILED HER CLAIMS PURSUANT THERETO

The thrust of the appellees' argument to affirm dismissal of plaintiff's claims focuses on a "rewriting" of the complaint in question. While plaintiff in the detailed complaint outlines that the defendants maintain a policy, practice, custom and usage of discriminating against her and other women similarly situated because of sex with respect to compensation, terms, conditions and privileges of employment-including excluding women from certain job classifications, denying women equal pay for equal work and retaliating against women who complain of employment discrimination, for example, appellees suggest that the complaint merely involves appellees' failure to renew appellant's teaching contract. When motion is made to dismiss a complaint for failure to state a cause of action, all allegations of the complaint must be accepted as true, the complaint should be given its most favorable reading, the complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim which would entitle him/her to relief.

Conley v. Gibson, 355 U.S. 41 (1957); Scheuer v. Rhodes, 416 U.S. 232 (1974). There is no basis, therefore, for this "recharacterization" of plaintiff's claims, given the rule in law that the allegations of the complaint must be accepted at this juncture of the case.

Since plaintiff filed her claims of employment discrimination with both federal and state agencies when she was yet an employee of appellees, there is no real question of timely filing of these claims since the employment discrimination was continuing at the time of filing with the federal and state agencies. In fact, plaintiff alleges that appellees' retaliation against her for having complained of employment discrimination continues to date.

This case is simply not a "typical layoff" or a "discontinuance of a job assignment or classification" or a single "failure to promote," as appellees suggest in their brief at pages 11 and 12. The authority cited by appellees is limited to the particular facts of the limited nature of the complaint involved in cases such as Griffin v. Pacific Maritime Assoc., 478 F.2d 1118 (9th Cir. 1973) cert. den. 414 U.S. 859 (1973), and is not applicable to a case such as this involving claims of continuing, institution-wide discrimination.

Moreover, Culpepper v. Reynolds Metal Co., 296 F.Supp. 1232 (N.D. Ga. 1969), cited at page 11 of appellees' brief, has been reversed by the Fifth Circuit, 421 F. 2d 888, 1970, and Guerra v. Manchester Terminal Corp., 350 F.Supp. 529 (S.D.

Texas 1972) was modified by the Fifth Circuit, 498 F.2d 641, 1974. In reversing Culpepper, the Fifth Circuit held all of the complaints to be timely filed by ruling that an employee's invoking contract grievance procedures tolls the time periods for filing claims pursuant to Title VII of the Civil Rights Act of 1964. In modifying the Guerra case, the Fifth Circuit held that pursuing claims before the National Labor Relations Board and the Equal Employment Opportunity Commission tolls the time period for filing a charge pursuant to 42 U.S.C. 1981.

There would seem to be no vitality in the lower court opinions, Hutchings v. United States Industries, Inc., 309 F. Supp. 691 (E.D. Texas 1969) and Love v. Pullman, 430 F.2d 49 (10th Cir. 1970) after their respective reversals, 428 F.2d 303 (5th Cir. 1970) and 404 U.S. 522 (1972). The respective courts on appeal reverse the lower courts fully in each instance and find claims to be timely stated.

Even if plaintiff's claims are not construed, for the sake of argument, to be claims of continuing employment discrimination, those claims have been timely filed. There are numerous instances where a person complaining of employment discrimination will make those claims first to a federal agency even though there is a state agency to which the same claims can be made. In fact, because of the likelihood of a lay person not fully understanding the nature

of the state and federal remedies and the deferral procedures pursuant to Title VII of the Civil Rights Act of 1964, the Equal Employment Opportunity Commission has adopted procedures for immediately forwarding any charge it receives to the state deferral agency and thereafter assuming jurisdiction in the Commission. (A copy of pertinent regulations is attached hereto and made a part hereof as Appendix A.) The Commission notes in this regulation that "...persons who seek the aid of the Commission are often confused and even risk loss of the protection of the Act. Accordingly, it is the intention of the Commission to simplify filing procedures for parties in deferral States and localities and thereby avoid the accidental forfeiture of important Federal rights."

Moreover, the Commission has specific contracts with deferral agencies in certain states whereby a filing with the Commission constitutes a filing with the state deferral agency or vice versa-a filing with the state deferral agency constitutes a filing with the Commission. A Memorandum of Understanding executed between the Commission and the New York State Division of Human Rights is attached hereto and made a part hereof as Appendix B.

Here plaintiff first filed her claims of employment discrimination with the federal government by her letter complaint to the Office of Federal Contract Compliance. This filing with the federal government constituted filing with

the Equal Employment Opportunity Commission. 35 F.R. 8461.

(The present Memorandum of Understanding appears at 39 F.R. 35855.) Filing with the Commission constitutes a filing with the state deferral agency, as provided in the Commission regulations noted above.

Plaintiff also filed her claims with the state deferral agency, New York State Division of Human Rights on February 9, 1973. As is apparent from the Memorandum of Understanding between the Commission and the New York State Division of Human Rights, this filing with the state deferral agency also constituted filing with the Commission.¹

¹ Appellees would have no argument if they would suggest that plaintiff cannot rely on these various regulations or contracts between federal agencies and/or federal and state agencies because the respective agencies did not in fact do what is contemplated. The action or inaction of a government agency in the handling of a complaint does not affect the rights of private parties to proceed with private litigation. Burns v. Thiokol Chemical Corp., 483 F.2d 300, 305 (5th Cir. 1973); Sanchez v. Standard Brands, 431 F.2d 455, 465 (5th Cir. 1970); Dent v. St. Louis - San Francisco Railway Company, 406 F.2d 399 (5th Cir. 1969), cert denied sub nom. Hyler v. Reynolds Metals Co., 403 U.S. 912 (1971); Miller v. International Paper Co., 408 F.2d 283 (5th Cir. 1969); Choate v. Caterpillar Tractor Company, 402 F.2d 357 (7th Cir. 1968).

Appellees overlook the most important section of 29 C.F.R. §1601.11 in suggesting at pages 7 and 8 of their brief that plaintiff's letter to the Office of Federal Contract Compliance does not constitute sufficient complaint. Subsection (b) provides that any charge may be amended to cure technical defects or omissions; including failure to swear to the charge, or to clarify and amplify allegations made therein-such amendments relate back to the original filing date. The scope of this regulation was noted by the Supreme Court in Love v. Pullman Co., 404 U.S. 522 (1972). The Commission in that case had regarded the "letter of inquiry" of the complainant as a formal complaint.

Reliance on Olson v. Rembrandt Printing Co., 511 F.2d 1228 (8th Cir. 1975) by appellees is misplaced. Plaintiff filed all her claims of employment discrimination with both the federal and state agencies well within 180 days of the discrimination even though she had one year from the last act of discrimination to file with the New York State Division of Human Rights and 300 days to file with the Equal Employment Opportunity Commission. Plaintiff was still employed when she filed all of her claims.¹

¹ Plaintiff questions the correctness of the court's opinion in Olson v. Rembrandt Printing Co., supra. This ruling which has the effect of requiring claims to be filed with a state deferral agency within 180 days, notwithstanding what might be the statutory time periods for filing such claims with that agency, in order to take advantage of Title VII's 300 day filing period is contrary to the operation and interpretation of the deferral section of Title VII to date.

In any event, plaintiff's filing of her claims with the Office of Federal Contract Compliance and the New York State Division of Human Rights constitutes a tolling of the time in which plaintiff need file her claims with the Equal Employment Opportunity Commission. See Vigil v. American Telephone and Telegraph Co., 455 F.2d 1222 (10th Cir. 1972) where the court held that a filing with the Equal Employment Opportunity Commission during the deferral period to a state agency tolls the time for filing claims with the Commission.

POINT II

THE COMPLAINT STATES CLAIMS PURSUANT TO 42 U.S.C. 1983 AND UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION

Appellees in their brief do not address at all the sufficiency of all these claims against all defendants under the Fourteenth Amendment to the United States Constitution. Just as the lower court did in its opinion, appellees ignore this independent jurisdictional basis for plaintiff's claims and in ignoring this basis, admit to this court, as they did to the court below that there is jurisdiction.

Not only is there jurisdiction of all the claims pursuant to Title VII, as noted previously, and the Fourteenth Amendment, but there is jurisdiction pursuant to 42 U.S.C. 1983. Plaintiff sues named individuals charging that they

have acted under color of state law to deprive plaintiff of federal constitutional and statutory rights.¹

A claim is properly stated when there are allegations that an individual, sued in his/her official capacity acted under color of law to deprive a person of federal statutory or constitutional rights. Holley v. Lavine, 529 F.2d 1294 (2nd Cir. 1976). As this court noted in Eisen v. Eastman, cert.den: 400 U.S.841(1970) 421 F.2d 560 (2nd Cir. 1969), at 562, 563, "Actions against a government official acting 'under color of' statutes and ordinances are what 42 U.S.C. §1983 is mainly about."

The authority which appellees cite at pages 15 and 16 of their brief, to suggest that notwithstanding there is jurisdiction of these claims under 42 U.S.C. 1983, that jurisdiction should not be exercised, is completely distinguishable from the case at hand. None of the decisions cited are cases arising under Title VII of the Civil Rights Act of 1964 and none of the cases involve claims of employment discrimination. Thus, none of the cases cited

¹ There was no argument made to the court below that the complaint in any way is deficient in charging the individuals with liability both in their representative and individual capacities. The court below in its decision, however, refers to the named defendants as being sued in their "representative capacities." While the court has jurisdiction of these claims whether the individual defendants are sued in their individual or representative capacities or both, plaintiff may amend the pleading as a right on remand to clarify any ambiguity since there has been no responsive pleading to the complaint. F.R.C.P. 15.

involve situations, such as in the case at hand, where both state and federal law contemplate simultaneous prosecution of employment discrimination claims in both state and federal forums.

Appellees make no attempt to explain the holding of this court in Voutsis v. Union Carbide, 452 F.2d 889 (2nd Cir. 1971) cert. den. 406 U.S. 918 (1972) that the federal remedy for employment discrimination is independent of any state remedy. Nor do the appellees distinguish Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974) where the Supreme Court notes that Congress anticipated overlap of remedies between federal and state laws in the area of employment discrimination since the objective of all remedies is to eliminate immediately all employment discrimination.

If we were to apply the rationale of Eisen v. Eastman, supra, this court would find jurisdiction under 42 U.S.C. 1983 and would not decline to exercise that jurisdiction. This case involves litigation of important personal and constitutional rights. This case is far more than an action for money damages only. This case involves litigation to secure the basic right to employment without discrimination, "...today's passport to political and social citizenship." Hutchings v. United States Industries, Inc., 428 F.2d 303, 309, (5th Cir. 1970). No conclusion can be drawn in this

case as could be drawn by the court in Eisen v. Eastman, that there is an effective state administrative remedy which has not been exhausted.¹

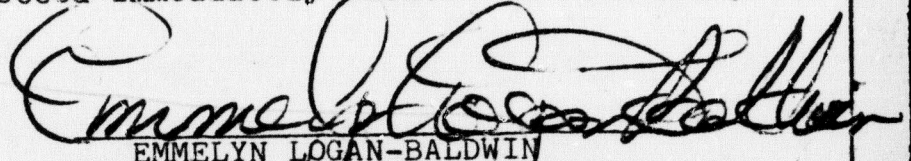
There is nothing in this court's more recent decisions of Fuentes v. Roher, 519 F.2d 379 (2nd Cir. 1975) or Cordova v. Reed, 521 F.2d 621 (2nd Cir. 1975) that in any way supports appellees' contention that the court should decline its 42 U.S.C. 1983 jurisdiction. In Cordova, the court held that the lawsuit was properly brought pursuant to 42 U.S.C. 1983 because exhaustion of state administrative remedies was not required under the circumstances. Likewise in Fuentes, the court found jurisdiction under 42 U.S.C. 1983 and reached the merits of the claim.

CONCLUSION

For the foregoing reasons, and for the reasons previously set forth in plaintiff's brief dated April 5, 1976, plaintiff

¹ In fact, the record establishes that the appellees are pursuing dilatory tactics in the proceedings before the New York State Division of Human Rights just as they are pursuing dilatory tactics in the court below. A.133 Appellees are blocking appropriate production of documents in support of plaintiff's claims in both the state and federal proceedings.

requests that the court reverse the decision of the lower court finding that plaintiff's complaint states claims against all defendants upon three jurisdictional bases, Title VII of the Civil Rights Act of 1964, 42 U.S.C. 1983 and the Fourteenth Amendment to the Constitution. The court should remand this case with directions that discovery as noticed by the plaintiff proceed immediately without further delay.



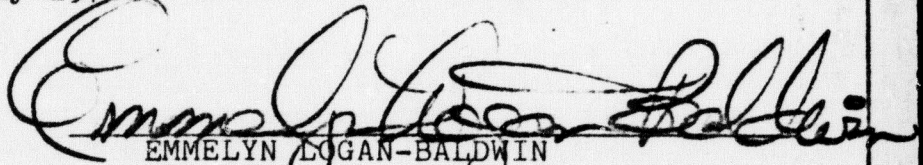
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May 24, 1976

No. 76-7047

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply Brief of Plaintiff-Appellant was served on the defendants-appellees by my causing two copies thereof to be mailed to Louis J. Leftkowitz, Attorney General of the State of New York, Dominic J. Tuminario, Esq., Assistant Attorney General, of counsel, 2 World Trade Center, New York, New York 10047 this 24th day of May 1976.



EMMELYN LOGAN-BALDWIN
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May 24, 1976

APPENDIX A

(5) A statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a State or local authority charged with the enforcement of fair employment practice laws, and, if so, the date of such commencement and the name of the authority.

(b) Notwithstanding the provisions of paragraph (a) of this section, a charge is deemed filed when the Commission receives from the person making a charge a written statement sufficiently precise to identify the parties and to describe generally the action or practices complained of. A charge may be amended to cure technical defects or omissions, including failure to swear to the charge, or to clarify and amplify allegations made therein, and such amendments alleging additional acts which constitute unlawful employment practices directly related to or growing out of the subject matter of the original charge will relate back to the original filing date. [Sec. 1601.11 reads as last amended and effective May 6, 1972.]

¶ 4070.12

§ 1601.12 Deferrals to State and local authorities.

(a) In order to give full weight to the policy of section 706(c) of the Act, which affords State and local fair employment practice agencies that come within the provisions of that section an opportunity to remedy alleged discrimination concurrently regulated by Title VII and State or local law, the Commission adopts the following procedures with respect to allegations of discrimination filed with the Commission where there is no evidence that such allegations were earlier presented to an appropriate 706 Agency. It is the intent of the Commission to thereby encourage the maximum degree of effectiveness in the State and local agencies. The Commission shall endeavor to maintain close communication with the State and local agencies with respect to all matters forwarded to such agencies and shall provide such assistance to State and local agencies as is permitted by law and as is practicable. It is the experience of the Commission that because of the present procedures, persons who seek the aid of the Commission are often confused and even risk loss of the protection of the Act. Accordingly, it is the intent of the Commission to simplify filing procedures for parties in deferral States and localities and thereby avoid the accidental forfeiture of important Federal rights.

¶ 4070.12

(b) The following procedures shall be followed with respect to cases arising in the jurisdiction of "706 Agencies" to which the Commission defers as further defined in paragraph (c) of this section.

(1) Any document, whether or not verified, received by the Commission as provided in § 1601.7, which may constitute a charge cognizable under Title VII, shall be deferred to the appropriate 706 Agency, as further defined in paragraph (c) of this section, as provided in the procedures set forth below:

(i) All such documents shall be dated and time stamped upon receipt.

(ii) A copy of the original document shall be transmitted by registered mail, return requested, to the appropriate State or local agency, or, where the State or local agency has consented thereto, by certified mail, by regular mail or by hand delivery.

(iii) The aggrieved party and any person filing a charge on behalf of an aggrieved party shall be notified, in writing, that the document which he or she sent to the Commission has been forwarded to the State or local agency pursuant to the provisions of section 706(c), and that unless the Commission is notified to the contrary, on the termination of State or local proceedings, or after 60 (or, where appropriate, 120) days have passed, whichever occurs first, the Commission will consider the charge to be filed with the Commission and commence processing the case. Where the State or local agency terminates its proceedings within sixty (60) (or, where appropriate, 120) days without notification to the Commission of such action the Commission will consider the charge to be filed with the Commission on the date the person making the charge was notified of the termination.

(iv) The 60-day (or, where appropriate, 120-day) period shall be deemed to have commenced at the time such document is mailed or delivered to the State or local authority. Upon notification of the termination of State or local proceedings or the expiration of 60 (or 120) days, whichever occurs first, the Commission will consider the charge to be filed with the Commission and will commence processing the case.

(v) In cases where the document is submitted to the Commission within 180 days from the date of the alleged violation but beyond the period of limitation of the particular 706 Agency, the Commission shall assume jurisdiction over the charge upon its receipt. In such cases only notice of the filing of the charge shall be given the State or local agency involved.

(A) In cases where the document is submitted to the Commission more than 180 days from the date of the alleged violation but within the period of limitation of the particular 706 Agency, the case shall be deferred pursuant to the procedures set forth above: *Provided, however, That unless the Commission is earlier notified of the termination of the State or local proceedings, the Commission will consider the charge to be filed with the Commission on the 300th day following the alleged discrimination and will commence processing the case. Where the State or local agency terminates its proceedings prior to the 300th day following the alleged act of discrimination, without notification to the Commission of such termination, the Commission will consider the charge to be filed with the Commission on the date the person making the charge was notified of the termination.*

(vi) In any case where the State or local agency has not formally notified the Commission of the termination of the State or local proceedings, the Commission shall serve the notice required by 1601.13 within 10 days from the date it becomes aware of the termination of such proceedings.

(c) 706 Agency Defined: For the purposes of this section and § 1601.10, the term "706 Agency" shall refer to an agency to which a charge is deferred. A State or local agency may be granted 706 Agency status for certain bases of discrimination and not for others. A charge shall be deferred where a State or a political subdivision of a State has a State or local law prohibiting the unlawful employment practice alleged, and said State or local law authorizes a State or local agency to grant or seek relief from the unlawful employment practice alleged or to institute criminal proceedings with respect thereto, and such State or local agency has been established and, at the time the charge is submitted to the Commission, is operational and processing charges filed under the State or local law.

(d) Notwithstanding that a charge is required to be deferred pursuant to this section or that the deferral period has not expired the Commission may commence judicial action for immediate, temporary or preliminary relief pursuant to section 706(f) (2) of the Act.

(e) Deferral is not required where there is an Agency which does not satisfy the requirements of paragraph (c) of this section. Where the Commission determines that a State or local agency does not come within the definition of a 706 Agency for purposes of a particular

basis of discrimination, it shall so notify the State or local agency in writing and give reasons therefore. The Commission shall, however, notify a State or local agency of the filing of charges for which the State or local agency is not a 706 Agency; for such purposes the State or local agency will be deemed a "Notice Agency".

(f) Because of the large number of State and local fair employment practice agencies, only those agencies which notify the Commission of their qualifications under subsection (c) of this section and request designation as "706 Agencies" or "Notice Agencies" or both will be eligible for such designation. Such notification must be submitted by written request to the Commission's Regional Director in whose region the State or local agency is located. The request shall include the following materials and information:

(1) A copy of the agency's fair employment practices law and any rules, regulations and guidelines of general interpretation issued pursuant thereto.

(2) A chart of the organization of the agency responsible for administering and enforcing said law.

(3) The amount of funds made available to or allocated by the agency for fair employment purposes.

(4) The identity and telephone number of the agency attorney whom the Commission may contact in reference to any legal questions that may arise in the process of its review of the agency's application.

(5) A statement certifying the following:

(i) That the State or political subdivision has a fair employment practice law;

(ii) That such law authorizes the applicant agency or authority to grant or seek relief from employment practices found to be illegal under such law or that it authorizes the agency to institute criminal proceedings;

(iii) That such agency or authority has been established and is operational and processing charges filed under such law.

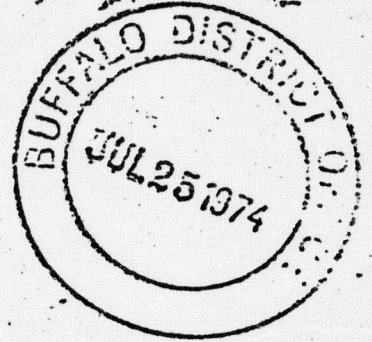
(g) Where both State and local 706 Agencies exist, the Commission reserves the right to defer to the State 706 Agency only. However, if the Commission determines that it would best serve the purposes of the Act, it may defer to either or both State and local 706 Agencies.

(h) The continued designation of a 706 Agency for certain bases of discrimination will be dependent upon the

APPENDIX B

NEW YORK
STATE

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506



MEMORANDUM OF UNDERSTANDING

In order to provide for efficient cooperation and coordination of enforcement activities under Title VII of the Civil Rights Act of 1964 (the "Act") and the Human Rights Law of The State of New York the Equal Employment Opportunity Commission (the "Commission") and The New York State Division of Human Rights (the "Agency") hereby express adherence to the following procedure for the processing and investigation of charges of discrimination in employment:

1. When an employment discrimination charge is filed with the Agency, the Agency will furnish the charging party with literature prepared by the Commission describing his federal rights and advise him, at some time before the expiration of the 60- or 120-day period of deference provided by section 706(b) of the Act of his right to file a complaint with the Commission. If the charging party at the time of filing a charge with the Agency, or at any other time, indicates to the Agency that he wishes to file with the Commission, the Agency will notify the Commission (on a form to be supplied by the Commission). Pursuant to Section 705(f), the Commission by this agreement designates the Agency as a State Office of the Commission for the sole purpose of receiving such charges on behalf of the Commission, and the Agency agrees to receive such charges. The Commission will consider the charge to be filed with the Commission at the expiration of the period of deference. Where the charging party has indicated that he wishes to file with the Commission and the case is terminated by the Agency, the Commission will be notified by the Agency of the nature and basis of the disposition (on a form to be supplied by the Commission). The Commission will consider the charge to be filed with the Commission at the time of such state agency termination. Pursuant to Section 705(f), the Commission by this agreement designates the Agency as a State office of the Commission for the sole purpose of receiving such charges on behalf of the Commission, and the Agency agrees to receive such charges. The Commission will consider the charge to be filed with the Commission when the state agency terminates its proceedings.
2. When the Commission receives a charge which must be deferred to the Agency under section 706(b) of the Act, the Commission will send by registered mail a copy of the charge, or the

Approved by Commission
6/7/71 Page 1

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original, where requested, to the Agency, together with all other available information on the case. The Agency hereby designates the Commission to serve as its agent for the purpose of the receipt of charges and agrees that the period of deference provided by section 706(b) commences to run when the charge is sent. The Commission will notify the charging party of the deferral and the date thereof and will advise him that he should cooperate with the Agency in its handling of his case and that the Commission will consider the charge to be filed with the Commission at the expiration of the period of deference unless it is notified by the charging party that the charge has been settled to his satisfaction. The Agency will periodically inform the Commission (on a form to be supplied by the Commission) of all actions taken on charges deferred to the Agency. If the Agency terminates its proceedings prior to the expiration of the period of deference the procedure outlined in paragraph 1 will apply.

3. Upon the expiration of the period of deference the Commission will consider the charge to be filed with the Commission. The Commission will develop and forward to the Agency standards of investigation, finding, and remedy in certain classes of cases. In those classes of cases the Commission may temporarily refrain from actually processing the charge, and will so notify the Agency, if it appears that the Agency will meet those standards in the processing of that case. In addition, if the Agency consistently meets those standards of case processing the Commission may adopt the investigative findings of the Agency when they result in a formal written finding that cause exists to believe that an unlawful employment practice exists; and may approve Agency Conciliation Agreements or Cease and Desist Orders when they are accepted by the charging party and when they effectuate the basis remedial purposes of the Commission. The Commission will assure, however, that, where the charging party wishes to assert his federal rights or where the interest of effective enforcement of Title VII requires it the charge will be processed promptly. Provided, however, that such procedures in no way shall detract from the responsibility of the Agency under State law.
4. In the course of its investigation of a charge the Commission shall have access to relevant information in the possession of the Agency, including its investigative files with respect to the same or related cases, and for this purpose representatives of the Commission will be permitted to copy or obtain copies of pertinent documents, and to utilize the same in proceedings under Title VII, provided that information on conciliation attempts will not be made public. The Commission shall in like circumstances grant to representatives of the Agency similar access to relevant information in its possession. The

Agency may utilize such information but may not make it public except as part of enforcement proceedings under its statute. To the extent permitted by law and by applicable policies and regulations similar access will be granted also to information in the possession of other federal agencies. However, the Commission and the Agency agree that information on conciliation attempts will not be made public where such disclosure would be contrary to the statutory provisions or policies applicable to conciliation proceedings. Provided, however, the sharing of information on conciliation by the Agency and the Commission with each other shall not be deemed to be making such information public.

5. Where the same or related charges are pending before the Agency and the Commission, the Commission and the Agency will endeavor through consultation and mutual assistance to provide for efficient processing of the charges. The Commission may permit personnel of the Agency to accompany Commission personnel on investigations and conciliation of cases falling within their joint jurisdiction. Provided, however, that such procedures in no way shall detract from the responsibility of the Commission under Federal law. The Agency will permit personnel of the Commission to accompany and observe Agency personnel on investigations and conciliation of cases falling within their joint jurisdiction. Provided, however, that such procedures in no way shall detract from the responsibility of the Agency under State law.
6. In accordance with section 709(b) the Commission may with the concurrence of the Agency designate the Agency or its employees to act for it in the course of investigation or conciliation and may reimburse the Agency or its employees for such services.
7. Settlement of a case whether or not the case was deferred by the Commission or filed with the Agency on terms satisfactory to the Agency shall not be deemed by the Commission dispositive of the charging party's rights under Federal law inless the Commission is made a party to the agreement or the charging party has accepted the terms as equitable and executed a written voluntary waiver (form to be supplied by the Commission) evidencing such acceptance.
8. Upon request from the Commission the Agency will provide the appropriate Field Office of the Commission with a copy of all charges or complaints filed with it under State law in addition to notifying the charging parties of their Federal rights as provided in paragraph 1 above.

9. If a charge is filed by a member of the Commission alleging an unlawful practice occurring within the jurisdiction of the Agency, the Commission will notify the Agency. If the Agency requests time to process the charge the procedures outlined above will be followed.
10. The Commission and the Agency each shall have the power to cancel this Memorandum of Understanding at any time by mailing written notice to the other's principal office. Upon such cancellation, neither the Commission nor this Agency shall have any further obligation under, or on account of, this Memorandum of Understanding. Except that, subject to appropriate audit, the Commission shall make any payments due under existing contracts for work actually performed prior to such cancellation.

James M. Loebe
Title: Commissioner
Agency: New York State Division
of Human Rights

William B. Bunn
Chairman
Equal Employment Opportunity Commission

June 20, 1972
Date

X July 6, 1972
Date